



STATE OF CALIFORNIA  
**FRANCHISE TAX BOARD – Legal Department**  
P. O. Box 1720  
Rancho Cordova, CA 95741-1720  
Telephone (916) 845-6831  
FAX (916) 845-3648

JOHN CHIANG  
Chair

BETTY T. YEE  
Member

MICHAEL C. GENEST  
Member

\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*

Date: July 11, 2007  
Information Letter 2007-1

RE: Chief Counsel Ruling Request – \*\*\*\*\*

Dear \*\*\*\*\*.

Your request for a Chief Counsel Ruling dated \*\*\*\*\* , has been referred to me for a response. Your letter provided facts related to the Taxpayer's receipt of income and a legal analysis. Thank you for the information and analysis provided.

FTB Notice 89-277 (May 10, 1989) contains the Franchise Tax Board Chief Counsel Rulings Guidelines (copy attached). The Franchise Tax Board will issue advance rulings and advisory information letters to non-corporate taxpayers when possible in the interests of sound tax administration. The Franchise Tax Board may decline to issue an advance ruling, however, when warranted by the facts and circumstances of a particular case. We follow federal policy and ordinarily will not issue a ruling in certain areas due to the factual nature of the issues involved. Further, it is our policy not to issue advance rulings in situations where California state and federal laws are the same and reasonably thorough research would provide the answer.

The issue as presented in your letter is whether the payment the qui tam relator, an asserted \*\*\*\*\* resident, received as her share of the proceeds is subject to California income tax where the qui tam action on pendent state claims she asserted on behalf of the state of California under the California False Claims Act (CFCA) was filed and settled in \*\*\*\*\* federal district court.<sup>1</sup>

The share of the proceeds a qui tam relator receives in a qui tam action or settlement pursuant to the federal False Claims Act is a reward for her efforts in recovering for the government money fraudulently obtained. The qui tam payment constitutes compensation for services, includable in gross income. (*Roco v. C.I.R.* (2003) 121 T.C. 160, 164-165; see Treas. Reg. § 1.61-2(a)(1).) California Revenue and Taxation Code section 17071 incorporates the definition of gross income set forth in Internal Revenue Code (IRC) section 61, except as

---

<sup>1</sup> Under the CFCA, a private individual (qui tam plaintiff or relator) may file a civil action (qui tam action) on behalf of the State for false claims presented to the State. (Gov. Code, §§ 12651, subd. (a); 12652, subd. (c)(1).) The relator is entitled to a share of the proceeds of the action or settlement of the claim, even when the State intervenes. (*Id.* § 12652, subds. (c)(4), (g)(2).)

otherwise provided. IRC section 61(a)(1) provides, in pertinent part, that gross income includes compensation for services.

Assuming, from the facts presented, the qui tam relator was a California nonresident during the relevant periods related to the filing, prosecution, and settlement of the qui tam action on CFCA claims, gross income of a California nonresident includes only gross income from sources within this state. (Rev. & Tax. Code, § 17951, subd. (a).) Taxable income of a nonresident includes gross income and deductions derived from sources within this state. (Rev. & Tax. Code, § 17041, subd. (i)(1)(B).)

What determines the source of income from personal services is the place where the services are actually performed. (*Appeal of Sam and Betty Spiegel*, 86-SBE-121, June 10, 1986.) If a nonresident is employed in this state at intervals during the year, compensation for personal services will be apportioned in such a manner as to allocate to California that portion reasonably attributable to services rendered in this state. (Cal. Code Regs., tit. 18, § 17951-5, subd. (b).) If a nonresident performs no services within this state, she will not have compensation for services sourced to and taxable by California. (Rev. & Tax. Code, § 17951, subd. (a).)

We decline to issue a ruling in this case because the response depends upon factual determinations regarding the sourcing of the amount received by the qui tam relator.

Please be advised this letter is for information only and does not constitute “written advice from the board” within the meaning of Revenue and Taxation Code section 21012, subdivision (a). You should also be aware the discussion above may no longer be applicable, should a change occur in relevant statutory, administrative, or case law or in federal interpretation of federal law, where this letter is based upon such an interpretation.

Very truly yours,

Judy F. Hirano  
Tax Counsel

Enclosure